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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,280	04/22/2004	Shikio Yoshida	1248-0716PUS1	6465
2292 7590 12/10/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER PATEL, HARESH N				
ART UNIT		PAPER NUMBER		
2454				
NOTIFICATION DATE		DELIVERY MODE		
12/10/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/829,280

Applicant(s)

YOSHIDA ET AL.

Examiner

HARESH N. PATEL

Art Unit

2454

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-27, 29-31 are subject to examination. Claim 28 is cancelled. Claim 4 is allowable but objected to.
2. Applicant's statements, "Applicants have amended independent claims merely to further clarify the invention in order to move prosecution forward.", etc., are noted. However, the office action dated 6/6/2008 neither proposed nor required additional limitations that are provided in the rejected claims of the office action dated 6/6/2008. The additional limitations in fact narrows the scope of the subject matter of the claims, please see the claims dated 9/5/2008 with additional limitations over the rejected claims of the office action dated 6/6/2008, which has been made in response to the prior art rejections of the office action dated 6/6/2008.

Specification

3. The amendment to the title dated 9/5/08 is acknowledged.

Response to Arguments

4. Applicant's arguments filed 9/5/2008, pages 12-16, have been fully considered but they are not persuasive. Therefore, rejection of the rejected claims is maintained.
5. Considering the applicant's amendment, i.e., additional limitations, to the claims, the rejections that were made under 35 U.S.C. 102 in the office action dated 6/6/2008 has been made under 35 U.S.C. 103(a).

6. The applicant's statements, Ueda is not an available reference under 35 U.S.C. § 102(c): The Examiner cites the Ueda publication under 35 U.S.C. § 102(e); however, the Ueda publication does not have a 102(e) date because the International Application no. PCT/JP2002/006827 (Publication no. WO/2003/007594) was not published in the English language. See MPEP 2136.03. Therefore, the outstanding 35 U.S.C. § 102(e) rejection over the Ueda publication should be withdrawn., are acknowledged and noted.

Regarding the applicant's concern, The object of Sayers is to provide a wireless network that employs a dynamically changing topology to accommodate user mobility and that is also capable of accepting and handling heterogeneous user traffic from multiple devices in a more efficient manner (paragraph 7). Further, Sayers describes JMRU 12 includes two types of high and width radio, on is for long range relay communication and the other for short range (paragraph 20). The object of Schein is to reduce the interference caused by the broadcast channel (paragraph 8). Further, Schein describes selecting random access channels to be assigned to user terminals (paragraph 9). Schein also discloses a SDMA processor uses the received signal measurements 44 to select a channel for a connection (paragraph 23); the examiner respectfully disagrees. The relied upon disclosure and the teachings of the Sayers and Schein are not limited as concluded by the applicant. Sayers and Schein discloses the broadly claimed limitations, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 102, very clearly states, The invention being thus described, it will be obvious that the same may be varied in many ways. Such variations are not to be regarded as a departure from the spirit and scope of the invention, and all such

modifications as would be obvious to one skilled in the art intended to be included within the scope of the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963).** Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985).** Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).**

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 5-27, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayers et al. 2004/0048613, KatanaMe Inc., (Hereinafter Sayers-KatanaMe-Inc) in view of "Official Notice".

Regarding the claims 1-3, 5-27, 29-31, Please refer to the office action dated 6/6/2008 for the rejected claimed subject matter under Sayers-KatanaMe-Inc. Sayers-KatanaMe-Inc also discloses a plurality of physical layers of various kinds different from each other (e.g., page 2); a plurality of communication state detecting sections for respectively detecting communication

states when adopting each of the plurality of physical layers (e.g., page 2), the physical layer selecting means selects different physical layers for a first application and a second application, or in a case where a link is not established or there is no other physical layer (e.g., page 2), except a physical layer for the first application, capable of providing a communication quality level required by the second application (e.g., page 2), the physical layer selecting means performs selection such that the first and the second applications share a same physical layer (e.g., page 2). However, Sayers-KatanaMe-Inc does not specifically mention about determining communication quality levels respectively corresponding to each of the plurality of physical layers according to results of detections by each of the communication state detecting sections and selecting among said plurality of physical layers for each application. "Official Notice" is taken that both the concept and advantages of providing these limitations is well known and expected in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include these limitations with the teachings of Sayers-KatanaMe-Inc in order to facilitate usage of the determining and the selecting steps because it would support handling communication with multiple devices using the different physical layers of the communication device. The communication would be handles based on the quality supported by the respective physical layer.

9. Claims 1-3, 5-27, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein et al. 2003/0133426 (Hereinafter Schein) in view of "Official Notice".

Regarding the claims 1-3, 5-27, 29-31, Please refer to the office action dated 6/6/2008 for the rejected claimed subject matter under Schein. Schein also discloses a plurality of physical

layers of various kinds different from each other (e.g., page 2); a plurality of communication state detecting sections for respectively detecting communication states when adopting each of the plurality of physical layers (e.g., page 2), the physical layer selecting means selects different physical layers for a first application and a second application, or in a case where a link is not established or there is no other physical layer (e.g., page 2), except a physical layer for the first application, capable of providing a communication quality level required by the second application (e.g., page 2), the physical layer selecting means performs selection such that the first and the second applications share a same physical layer (e.g., page 2). However, Sayers-KatanaMe-Inc does not specifically mention about determining communication quality levels respectively corresponding to each of the plurality of physical layers according to results of detections by each of the communication state detecting sections and selecting among said plurality of physical layers for each application. "Official Notice" is taken that both the concept and advantages of providing these limitations is well known and expected in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include these limitations with the teachings of Sayers-KatanaMe-Inc in order to facilitate usage of the determining and the selecting steps because it would support handling communication with multiple devices using the different physical layers of the communication device. The communication would be handles based on the quality supported by the respective physical layer.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Note: to expedite the prosecution of the case, “the highest priority if” is considered --the highest priority when-- ; “communication quality level if any” is considered – communication quality level-- ; for the allowable subject matter and the applicant is requested to provide similar changes. Proposal: Applicant is encouraged to add subject matter (similar) of claim 4 to the claims 29 and 31, which would be entered and would be allowable too, if provided in response to this office action.

Conclusion

THIS ACTION IS MADE FINAL necessitated by the claim amendments dated 9/5/2008. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner has cited particular columns and line numbers and/or paragraphs and/or sections and/or page numbers in the reference(s) as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety, as potentially teaching, all or part of the claimed invention, as well as the context of the passage, as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/829,280
Art Unit: 2454

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/Haresh N. Patel/

Primary Examiner, Art Unit 2454

11/6/08